



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF VERIFIED PETITION OF)
DIGITALSPEED COMMUNICATIONS, INC. FOR)
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND) ORDER
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF NEW JERSEY)

DOCKET NO. TE04030155

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated March 4, 2004, DigitalSpeed Communications, Inc. ("Petitioner" or "DSC") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based competitive local exchange and interexchange telecommunications services in the State of New Jersey. Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

DSC is a privately held corporation organized under the laws of the State of Pennsylvania. Petitioner's principal offices are located at 1811 Chestnut Street, Suite 304, Philadelphia, Pennsylvania 19103. Innovative Communications, Inc., a telecommunications consulting firm, is an affiliate company of DSC. Both companies are 100% wholly owned by Adam Pasternack, President of DSC.

Petitioner has submitted copies of its Articles of Incorporation from the State of Pennsylvania and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, DSC was formed to provide facilities-based competitive local exchange and interexchange telecommunications services throughout New Jersey. Petitioner states that it has applied for authority to provide local exchange and interexchange telecommunications services in the State of Pennsylvania and plans to apply for such services in New York, Delaware, the District of Columbia and Virginia. Petitioner states that it is authorized by the Federal

Communications Commission ("FCC") to provide domestic interstate interexchange telecommunications services and its authority to provide international telecommunications services is pending with the FCC. Petitioner states that it does not have any predecessors, subsidiaries or affiliates providing telecommunications services.

Petitioner seeks authority to provide facilities-based competitive local exchange and interexchange telecommunications services to both business and residential customers throughout the State of New Jersey. Petitioner requests authority to operate as a competitive local exchange carrier in all areas defined by the existing exchange areas in which Verizon is authorized to operate within State of New Jersey. Petitioner states that its services may include, but are not necessarily limited to, local exchange access services and dedicated and special access services. Petitioner states that initially it will offer local services via resale using the facilities of other certificated carriers and at a later date, may expand its service offering to include a broader range of local products and services. Petitioner states that as business and economic circumstances dictate it intends to provide additional local exchange, exchange access and dedicated transport services and in the future, may undertake plans to construct an outside plant or loop distribution equipment. Petitioner states that it will file a tariff for Board approval and it maintains a toll-free number for its customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Philadelphia, Pennsylvania. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, DSC states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to DSC, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DSC is a newly formed corporation and does not have a significant financial history. As such, DSC is filing the financial statement of its President, Adam Pasternack, who is providing the financial backing to Petitioner as well as to its affiliate upon which DSC is relying for financial security.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed DSC's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any

reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 4/28/04

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)

KRISTI IZZO
SECRETARY

IN THE MATTER OF VERIFIED PETITION OF DIGITALSPEED COMMUNICATIONS, INC.
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE
STATE OF NEW JERSEY

DOCKET NO. TE04030155

SERVICE LIST

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